
Civil Rights & Judiciary Committee

HB 1901

Brief Description: Updating laws concerning civil protection orders to further enhance and improve their efficacy and accessibility.

Sponsors: Representatives Goodman, Davis, Taylor and Kloba.

Brief Summary of Bill

- Revises provisions governing court jurisdiction over civil protection order proceedings.
- Includes coercive control within the definition of domestic violence under the protection order law and defines the term.
- Revises procedures and standards for filing and service of protection order petitions and orders.
- Makes changes to aspects of the protection order hearing process.
- Modifies standards and procedures for entry of protection orders and relief that may be granted.
- Addresses violations and enforcement by specifying required court appearances following an arrest or criminal charge, and revises the types of orders included under the offense of unlawful possession of a firearm.
- Revises provisions governing modification or termination to address adding a new child to an order and who may file a petition for modification or termination of a vulnerable adult protection order.

Hearing Date: 1/19/22

Staff: Edie Adams (786-7180).

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

Background:

In 2021 the Legislature enacted Engrossed Second Substitute House Bill 1320 (E2SHB 1320), which established a new chapter of law to govern all types of protection orders, including domestic violence protection orders (DVPOs), sexual assault protection orders (SAPOs), stalking protection orders (Stalking POs), anti-harassment protection orders (AHPOs), vulnerable adult protection orders (VAPOs), and extreme risk protection orders (ERPOs).

This new chapter consolidated and harmonized former laws governing protection orders to provide more uniformity in the rules and procedures that govern protection order petitions and proceedings, including in the areas of: filing and service of petitions; conduct of hearings; available remedies; and modification, termination, and enforcement of protection orders. In addition, a number of new provisions governing protection orders were established to update the law, including authorizing electronic filing and electronic service, and allowing protection order hearings to be conducted remotely according to specified procedures.

The E2SHB 1320 retained the existing differing approaches to the subject matter jurisdiction of superior courts and courts of limited jurisdiction to hear protection order proceedings, but directed the Administrative Office of the Courts (AOC), through the Gender and Justice Commission (Commission), to study and make recommendations on whether jurisdiction should be harmonized, modified, or consolidated. In addition, the Commission was tasked with making recommendations to the Legislature on additional topics, including how protection order law can more effectively address the type of abuse known as "coercive control."

With respect to court jurisdiction, the Commission's recommendations include:

- Harmonize the circumstances that require transfer of cases to the superior court for DVPOs, SAPOs, Stalking POs, and AHPOs, and improve the transfer process to create more uniformity and clarity.
- Permit direct filing of petitions in superior court where circumstances are alleged that would ultimately require a transfer.
- Evaluate the existing jurisdiction of municipal courts in light of constitutional concerns.

With respect to the question of how to more effectively address "coercive control," the Commission provided the following recommendations:

- Include "coercive control" in the definition of domestic violence under the civil protection order laws.
- Define "coercive control" with elements that include: specific examples of tactics and abusive behaviors that are coercive and controlling; and limiting principles to distinguish the conduct from self-protective or defensive tactics or situational conflict.
- Include coercive control as a subject on which judicial officers should receive training, and allocate funding for the AOC to develop evidence-based training and resources for judicial officers on coercive control.

Summary of Bill:

The laws governing civil protection orders are amended to implement recommendations of the Commission relating to jurisdiction of courts over protection order proceedings and inclusion of coercive control in the definition of domestic violence. Numerous additional changes are made to provisions of the protection order law, including in areas relating to: filing and service of petitions; hearing procedures; issuance of orders, including duration and relief; violations and enforcement; and modification or termination of orders.

Definitions.

The definition of "intimate partner" is revised to provide that the term does not include persons who have a child in common where the child is conceived through sexual assault.

The definition of "domestic violence" is modified to include coercive control. "Coercive control" is defined to mean a pattern of behavior that is used to cause another to suffer physical, emotional, or psychological harm, and in purpose or effect interferes with a person's free will and personal liberty.

Examples of coercive control include, but are not limited to, engaging in any of the following:

- intimidation, controlling or compelling conduct, or harm or threats of harm, including physical forms of violence against the other party, the other party's children, family members, friends, or pets, including by:
 - damaging, destroying, or threatening to damage or destroy, or forcing the other party to relinquish, goods, property, or items of special value;
 - using technology to threaten, humiliate, harass, stalk, intimidate, exert undue influence over, or abuse the other party, including by engaging in cyberstalking, monitoring, surveillance, impersonation, manipulation of electronic media, or distribution of or threats to distribute actual or fabricated intimate images;
 - cleaning, accessing, displaying, using, or wearing a firearm in an intimidating or threatening manner;
 - driving recklessly with the other party or minor children in the vehicle;
 - threatening to harm the other party's career;
 - threatening suicide or self-harm;
 - threatening to contact local or federal agencies based on actual or suspected immigration status;
 - exerting control over the other party's identity documents;
 - making, or threatening to make, private information public, including the other party's sexual orientation or gender identity, medical or behavioral health information, or other confidential information that jeopardizes safety; or
 - engaging in sexual or reproductive coercion;
- causing dependence, confinement, or isolation of the other party from friends, relatives, or other sources of support, including schooling and employment, or subjecting the other party to physical confinement or restraint;
- depriving the other party of basic necessities or committing other forms of financial exploitation;
- controlling, exerting undue influence over, interfering with, regulating, or monitoring the

other party's movements, communications, daily behavior, finances, economic resources, or employment, including but not limited to interference with or attempting to limit access to services for children of the other party, such as health care, medication, child care, or school-based extracurricular activities;

- engaging in vexatious litigation or abusive litigation as defined in RCW 26.51.020 against the other party to harass, coerce, or control the other party, to diminish or exhaust the other party's financial resources, or to compromise the other party's employment or housing; or
- frightening, humiliating, degrading, or punishing the other party, or engaging in psychological aggression toward the other party through other means.

"Coercive control" does not include protective actions taken by a party in good faith for the legitimate and lawful purpose of protecting themselves or children from the risk of harm posed by the other party.

Jurisdiction.

Jurisdiction over protection order proceedings is harmonized for DVPOs, SAPOs, Stalking POs, and AHPOs. The superior and district courts have jurisdiction over these proceedings, except that such proceedings must be transferred from district court to superior court under the following circumstances:

- a superior court has exercised or is exercising jurisdiction over a proceeding involving the parties;
- the action would have the effect of interfering with a respondent's care, control, or custody of the respondent's minor child;
- the action would affect the use or enjoyment of real property for which the respondent has a cognizable claim or would exclude a party from a shared dwelling;
- the petitioner, victim, or respondent to the petition is under 18 years of age; or
- the district court is unable to verify whether there are potentially conflicting or related orders involving the parties.

When the district court transfers a case to the superior court, it must indicate in the transfer order the circumstances and finding supporting the transfer. When a case is transferred to superior court and the notice and order are not served on the respondent in time for the full hearing, the superior court must determine whether to grant any request for a continuance.

Courts must make publicly available in print and online information about their transfer procedures, court calendars, and judicial officer assignment. Transfer procedures, court calendars, and judicial officer assignment must further specifically listed goals of the chapter governing protection orders.

Provisions granting jurisdiction over protection order proceedings to municipal courts are removed.

Filing.

When a petition meets the criteria for a different type of protection order other than the one

sought, the court must consider the petitioner's preference, and enter a temporary protection order or set the matter for a hearing as appropriate under the law. The court's decision on the appropriate type of order must not be based on alleviating potential stigma on the respondent.

When requesting an ex parte temporary order, a petitioner may request that the court enter an order to surrender and prohibit weapons without notice until a full protection order may be held. In an ex parte DVPO, the court must, when requested, include the petitioner's minor children as protected parties unless there is good cause not to include the minor children. The court must make written findings for a decision to not include the minor children pending the full hearing.

Protection order petitions and supporting documents that are submitted after business hours must be processed as soon as possible on the next judicial day.

Court systems that allow a petitioner to track the progress of a case must include notification of when the respondent has filed a motion for the release of surrendered firearms.

A filing fee may not be charged for an AHPO when the petitioner is seeking the order against a person who has engaged in: a hate crime; a single act of violence or threat of violence that meets specified criteria; or nonconsensual sexual conduct or penetration.

The requirement that minor children must only be referred to in the petition and filed documents by their initials and date of birth is removed. If a petition for a protection order is filed by an interested person, the affidavit or declaration must include a statement of why the petitioner qualifies as an interested person.

References to "electronic filing system" and "filing" are replaced with "electronic submission system" and "submission." The requirement that clerks must make all electronically filed court documents available for electronic access by judicial officers is removed. Instead, clerks must make available electronically to judicial officers any protection orders filed within the state. The requirement that clerks obtain community resource lists and translate them into the languages spoken by the top five non-English-speaking populations is removed. Instead, clerks must accept and provide community resource lists and accept translations of the lists from the programs that provided them.

The timeline by which the AOC must complete specified tasks, including development of a single petition form and preparation of instructional brochures and a protection order handbook, are delayed until December 30, 2022.

Service.

A petition for a VAPO that is filed by someone other than the vulnerable adult is added to the types of orders that require personal service. In cases where personal service is required, after two unsuccessful attempts, service must be permitted by electronic means.

Court authorization permitting electronic service is generally not required. However, in cases

where personal service is required (other than VAPO cases), either request of the petitioner, or good cause for granting an order for electronic service, are required to authorize service by electronic means. No formal motion is necessary.

Service by mail is permitted when: personal service was required, there have been two unsuccessful attempts at personal service, and electronic service is not possible; or personal service is not required and there have been two unsuccessful attempts at personal or electronic service. If service by mail is provided by a third party, the clerk must forward proof of service to the law enforcement agency in the county or municipality where the respondent resides.

Service is completed on the day the respondent is served personally, on the date of transmission for electronic service, on the fourteenth calendar day after mailing for service by mail, or on the date of the third publication when publication has been made for three consecutive weeks for service by publication.

Where electronic service is not completed because there was no verification of notice, and service by mail or publication has been authorized, copies must also be sent by electronic means to any known electronic addresses.

For ERPOs and protection orders that include an order to surrender weapons, if the order is entered in open court and the respondent appears in person, the respondent must be provided a copy and further service is not required. If the respondent appears remotely, or leaves the hearing before a final ruling is issued or order signed, and the court believes the respondent has sufficient notice, the order must recite that the respondent appeared before the court, has actual notice of the order, the necessity for further service is waived, and proof of service of the order is not necessary.

If known, a petitioner must provide on the confidential information form the respondent's email address, number for text messaging, and identification on social media applications and other technologies, and must attest that they are the legitimate, current, or last known contact information for the respondent.

The clerk must include the confidential information form when forwarding the order to the law enforcement agency in the county or municipality where the respondent resides for service. If the respondent has moved from that county or municipality and personal service is not required, the law enforcement agency specified in the order may serve the order.

Hearings.

Hearings may be conducted upon the information provided in the petition, live testimony of the parties if they chose to testify, and any additional sworn declarations.

Where a court resets a hearing date and reissues a temporary protection order, the hearing date must be reset no later than 14 days from the reissue date, except if the court permits service by mail or by publication, the court must reset the hearing date not later than 30 days from the date

of the order authorizing such service. These time frames may be extended for good cause.

In considering a request for a continuance, courts should consider the rebuttable presumption against delay and the goal of providing victims quick and effective relief. Where a hearing is continued, any reissued temporary order may include orders to surrender and prohibit weapons issued with or without notice.

If an ex parte temporary protection order is denied, the court must set a full hearing unless the court determines the petition does not contain prima facie allegations to support the issuance of any type of protection order. If the court does not set a full hearing, the petitioner may file an amended petition within 14 days of the court's denial. The court may dismiss the petition if it determines the amended petition does not contain prima facie allegations to support the issuance of any type of protection order or if the petitioner fails to file an amended petition within the required time.

Orders, Duration, Relief, and Remedies.

A court may grant an ex parte temporary protection order where the petitioner alleges fear of immediate serious harm, in addition to if the petitioner alleges that irreparable injury could result if an order is not issued immediately.

In an AHPO proceeding, the court may order the following relief only as part of a full protection order: excluding the respondent from the residence shared by the parties; making residential provisions with regard to minor children of the parties; and providing financial relief and restraining transfer of jointly owned assets.

Where a court orders law enforcement assistance in the execution of a protection order, any appropriate law enforcement agency should act where assistance is needed, even if not specifically named in the order, including assisting with the recovery of firearms.

When the respondent is ordered to vacate the residence or shared property, the court may permit the respondent to remove personal clothing, personal items needed during the duration of the order, and any other items specified by the court, while a law enforcement officer is present.

For ERPOs and protection orders that include an order to surrender weapons, the respondent must immediately surrender all firearms and any concealed pistol license, not previously surrendered, to a local law enforcement agency on the day of the hearing at which the respondent was present in person or remotely. If the respondent is in custody, arrangements to recover the firearms must be made prior to release.

Violations and Enforcement.

A defendant arrested for violating a protection order must appear in person before a magistrate within one judicial day after the arrest. At the time of appearance, the court must determine the necessity of imposing a no-contact order or other conditions of pretrial release. A defendant charged by citation, complaint, or information with violating a protection and not arrested must

appear in court for arraignment as soon as practicable, but no later than 14 days after the next day on which the court is in session following the citation, filing, or information.

The crime of Unlawful Possession of a Firearm in the second degree is amended to prohibit possession of a firearm based on a conviction for violating the restraint provisions of any type of protection order when committed by one family or household member against another or one intimate partner against another.

Modification or Termination.

A protected person who has a child or adopts a child after the protection order was issued but before the order expires may seek to include the child in the order on an ex parte basis only if the child is already in the physical custody of the petitioner. If the restrained person is the legal or biological parent of the child, a hearing must be set and notice given to the restrained person prior to final modification of the full protection order.

A motion to modify or terminate a VAPO may be brought by a vulnerable adult who is not subject to an order under the Uniform Guardianship Act (UGA). Where a vulnerable adult is subject to an order under the UGA, the vulnerable adult, or the vulnerable adult's guardian, conservator, or person acting on behalf of the vulnerable adult under a protective arrangement, may file a petition for modification or termination if that is within the person's authority under the guardianship, conservatorship, or protective arrangement.

Other.

Training for judicial officers should be evidence-based, and should include training on coercive control.

Provisions requiring studies and reports to the Legislature are repealed or expired once those duties are accomplished. Technical amendments are made to correct statutory citations.

Appropriation: None.

Fiscal Note: Requested on January 11, 2022.

Effective Date: The bill takes effect July 1, 2022, except for sections 9 through 13, relating to service requirements and hearing procedures, and section 34, relating to amendments to prior effective dates, which take effect immediately.